

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-30394-WRS

Chapter 11

LISA L. LAMBERT,

Debtor

MEMORANDUM DECISION

This Chapter 11 case is before the Court upon the Debtor's application to approve the employment of Gary A. Cook, a realtor with ALFA Realty. (Doc. 239). The Debtor seeks to employ Cook to sell commercial real property. The application is supported by the Affidavit of Gary A. Cook, which states, in part, as follows: "That to the best of my knowledge I do not hold any interest adverse to that of the bankruptcy estate herein." (Doc. 239, Exhibit A). This statement is insufficient.

Applications for employment of professional persons are governed by the provisions of Rule 2014, Fed. R. Bankr. P. "The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorney and accountant, the United States trustee¹ or any person employed in the office of the United States trustee." *Id.* The application and the affidavit are insufficient because no representation is made as to connections between Cook and the individuals listed in the rule.

The Court may not approve the employment of a professional who holds an interest which is adverse to the estate. 11 U.S.C. § 327(a). Where employment is for a specified special purpose, the condition is narrower, excluding only those professionals who hold an interest

¹ As a Bankruptcy Administrator rather than a United States Trustee serves in this district, the affidavit should make reference to her. See, Rule 9035, Fed. R. Bankr. P.

which is adverse with respect to the matter for which he is to be employed. 11 U.S.C. § 327(e).

It should be noted that the disclosure requirements of Rule 2014 are broader than the disqualifying conditions of either § 327(a) or (e). By limiting the affidavit as here, the Debtor may be concealing pertinent information from the Court and other parties in interest. This is further unsettling as at least one creditor has made allegations, unsubstantiated thus far, that the Debtor may be dealing with related parties without disclosing relationships by blood, marriage or affinity.² The Court is not willing to accept a legal conclusion, that Cook holds no adverse interest, without making full disclosure as provided by Rule 2014.

It may well be that there is no intention to conceal any connections that Cook may have. Cook may well be willing to execute an affidavit setting forth all connections with the persons indicated in the Rule. The Court does not intend to imply that there is anything improper about Cook's employment. Rather, the application is rejected as the form of the disclosures is insufficient. The Court will deny, by way of a separate order, the pending application. This denial is without prejudice to the Debtor's to resubmit the application supported by proper disclosures.

Done this 19TH day of November, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Collier H. Espy Jr., Attorney for Debtor
Teresa R. Jacobs, Bankruptcy Administrator

² In the affidavit executed by the Debtor's bankruptcy counsel Collier H. Espy, Jr., the required disclosures were made. (Doc. 16).

